

**CONTENT OF REFERRAL
TO DOJ FOR COLLECTION OF DELINQUENT DEBTS UNDER
CERCLA JUDICIAL AND ADMINISTRATIVE SETTLEMENTS**

I. FAILURE TO PAY AMOUNT DUE UNDER JUDICIAL CONSENT DECREE

A. FAILURE TO PAY SUM CERTAIN DUE ON A DATE CERTAIN (*i.e.*, “past cost” payment or “cashout” payment).

Under a judicial consent decree, a delinquency of a sum certain payment due on a date certain will trigger enforcement and collection efforts by the AUSA without further notice from EPA. No referral is needed.

B. FAILURE TO PAY FUTURE RESPONSE COST BILL UPON DEMAND BY EPA.

A “Collection Referral for Nonpayment of CERCLA Future Response Cost Due under Judicial Consent Decree” is needed from the EPA Regional Administrator (or his/her delegatee) to the Assistant Attorney General, Environment and Natural Resources Division, or his/her delegatee (“DOJ-ENRD”) containing the following information and documents:

1. Background Information

- a. Case name
- b. Site name and location
- c. DOJ case number
- d. Type (example: CERCLA §§106/107 RD/RA) and date of entry of CD that created obligation to pay
- e. Name of DOJ attorney assigned to CD
- f. Name and telephone number of Regional attorney
- g. Name and current address of Settling Defendant debtor(s) who has/have failed to pay
- h. Statement of CD payment violation (example: Failure to pay \$250,000 future response costs bill upon demand by EPA)
- i. Copy of CD

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the CD has been followed by EPA and that the Settling Defendant(s) have had the opportunity to pursue any administrative remedies (dispute resolution) provided by the CD. Cross-reference relevant CD Sections/Paragraphs (*e.g.*, Definitions, Reimbursement of Response Costs, Dispute Resolution, Stipulated Penalties). Attach, if applicable:
 1. Dated copy and proof of receipt of EPA's demand for future response costs with attachments (generally the standard, Regionally-prepared cost summary and, if applicable, the standard DOJ-prepared cost summary)
 2. Copy of Settling Defendant(s)' written objection to payment
 3. Copy of transmittal letter and check accompanying Settling Defendant(s)' payment of uncontested costs
 4. Copy of correspondence that established and funded an interest-bearing escrow account for contested costs
 5. Copy of Settling Defendant(s)' invocation of dispute resolution
 6. Documents generated during informal dispute resolution
 7. Documents generated during formal dispute resolution, including, as applicable, Settling Defendant(s)' invocation of formal dispute resolution, Settling Defendant(s) and EPA's Statements of Position, and EPA's final decision
- b. State if additional collection efforts, beyond those required by the CD, have been made by EPA. Attach, if applicable:
 1. Dated copy and proof of receipt of any EPA written communication to Settling Defendant(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Settling Defendant(s)
 4. Copy of written (and summary of any telephone) responses by Settling Defendant(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Settling Defendant(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Settling Defendant(s) has/have an inability to pay, state that conclusion. If a Settling Defendant has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Settling Defendant may have an inability to pay, include any information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (*e.g.*, Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of future response costs demanded, plus interest running from the date of the demand until the date of payment at the rate specified by the CD. This may also include payment of stipulated penalties. If stipulated penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the CD, evidence necessary to prove the elements of those causes of action must be provided.)

II. FAILURE TO PAY AMOUNT DUE UNDER ADMINISTRATIVE ORDER ON CONSENT OR ADMINISTRATIVE AGREEMENT

A. FAILURE TO PAY SUM CERTAIN \$1 MILLION OR LESS DUE ON A DATE CERTAIN.

For sum certain debts where the principal amount due is \$1 million or less (excluding interest, costs, and stipulated penalties), the referral should be sent to the U.S. Department of Justice, National Central Intake Facility, Suite 220, 1110 Bonifant St., Silver Spring, Maryland, 20910-3358, which will transmit the referral to the appropriate United States Attorney Office Financial Litigation Unit. The referral will consist of filling out a Claim Collection Litigation Report (CCLR). A CCLR with instructions on how to complete the form are separately attached (*See* Attachment 5), along with a model referral letter (*See* Attachment 4).

B. FAILURE TO PAY SUM CERTAIN OVER \$1 MILLION DUE ON A DATE CERTAIN (*i.e.*, “past cost” payment or “cashout” payment).

A “Collection Referral for Nonpayment of CERCLA Administrative [Past/Cashout] Response Costs Due under Administrative [Order on Consent/Agreement]” is needed from the EPA Regional Administrator (or his/her delegatee). For sum certain debts where the principal amount due is greater than \$1 million (excluding interest, costs, and stipulated penalties), the referral should be sent to the DOJ-ENRD). The referral should contain the following information and documents:

1. Background Information

- a. Site name and location
- b. Type (examples: CERCLA §§106/122 Removal AOC; CERCLA §§104/122 RI/FS AOC; CERCLA §122(h) Agreement) and effective date of AOC/Agreement creating obligation to pay
- c. EPA Docket Number of AOC/Agreement
- d. If AOC/Agreement was approved by DOJ prior to issuance (because it contained a compromise at a site where total response costs exceed \$500,000, excluding interest, or because it was issued under AG authority), then provide a copy of DOJ approval letter and name of DOJ attorney who handled the approval
- e. Name and telephone number of Regional attorney
- f. Name and current address of Respondent debtor(s) who has/have failed to pay
- g. Statement of AOC/Agreement payment violation (example: Failure to pay negotiated amount of [past/cashout] response costs as required by AOC/Agreement)
- h. Copy of AOC/Agreement
- i. If AOC/Agreement did not become effective until issuance of an EPA notice stating that public comments, if any, did not require modification of or withdrawal from the settlement, then include copy of notice

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the AOC/Agreement has been followed by EPA and that the AOC/Agreement did not contain any process for disputing the amount owed (because it was a negotiated sum certain). Cross-reference relevant Sections/Paragraphs of the AOC/Agreement (*e.g.*, Reimbursement of Response Costs, Stipulated Penalties). State that Respondent has failed to make payment as required by the terms of the AOC/Agreement.
- b. State if additional collection efforts, beyond those required by the AOC/Agreement, have been made by EPA. Attach, if applicable:
 1. Dated copy and proof of receipt of any EPA communication to Respondent(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Respondent(s)
 4. Copy of written (and summary of any telephone) responses by Respondent(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Respondent(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Respondent(s) has/have an inability to pay, state that

conclusion. If a Respondent has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Respondent may have an inability to pay, include information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (*e.g.*, Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of [past/cashout] costs required to be paid by the AOC/Agreement, plus interest running from the due date under the AOC/Agreement until the date of payment at the rate specified by the AOC/Agreement. This may also include payment of stipulated penalties. If stipulated penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the AOC/Agreement, evidence necessary to prove the elements of those causes of action must be provided.).

C. FAILURE TO PAY FUTURE RESPONSE COST BILL UPON DEMAND BY EPA.

A “Collection Referral for Nonpayment of CERCLA Future Response Cost Due under Administrative [Order on Consent/Agreement]” is needed from the EPA Regional Administrator (or his/her delegatee) to the DOJ-ENRD containing the following information and documents:

1. Background Information

- a. Site name and location
- b. Type (examples: CERCLA §§106/122 Removal AOC, CERCLA §§104/122 RI/FS AOC, or CERCLA §122(h) Agreement) and effective date of AOC/Agreement creating obligation to pay
- c. EPA Docket Number of AOC/Agreement
- d. If AOC/Agreement was approved by DOJ prior to issuance (because it contained a compromise at a site at which total response costs exceed \$500,000, excluding interest, or because it was issued under AG authority), then provide a copy of DOJ approval and name of DOJ attorney who handled the approval
- e. Name and telephone number of Regional attorney
- f. Name and current address of Respondent(s) who has/have failed to pay
- g. Statement of AOC/Agreement payment violation (example: Failure to pay \$250,000 future response costs bill upon demand by EPA)
- h. Copy of AOC/Agreement
- i. If AOC/Agreement did not become effective until issuance of an EPA notice stating that public comments, if any, did not require modification of or withdrawal from the settlement, then include copy of notice

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the AOC/Agreement has been followed by EPA and that Respondent(s) have had the opportunity to pursue any administrative remedies (dispute resolution) provided by the AOC/Agreement. Cross-reference relevant AOC/Agreement Sections/Paragraphs (*e.g.*, Definitions, Reimbursement of Response Costs, Dispute Resolution, Stipulated Penalties). Attach, if applicable:
 1. Dated copy and proof of receipt of EPA's demand for future response costs with attachments (generally the standard, Regionally-prepared cost summary and, if applicable, the standard DOJ-prepared cost summary)
 2. Copy of Respondent(s) written objection to payment
 3. Copy of transmittal letter and check accompanying Respondent(s)' payment of uncontested costs
 4. Copy of correspondence that established and funded an interest-bearing escrow account for contested costs
 5. Copy of Respondent(s)' invocation of dispute resolution
 6. Documents generated during informal dispute resolution
 7. Documents generated during formal dispute resolution, including, as applicable, Respondent(s) invocation of formal dispute resolution, Respondent(s) and EPA's Statements of Position, and EPA's final decision
- b. State if additional collection efforts, beyond those required by the AOC/Agreement, have been made by EPA. Attach, if applicable:
 1. Dated copy and proof of receipt of any EPA communication to Respondent(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Respondent(s)
 4. Copy of written (and summary of any telephone) responses by Respondent(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Respondent(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Respondent(s) has/have an inability to pay, state that conclusion. If a Respondent has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Respondent may have an inability to pay, include information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (*e.g.*, Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of future response costs demanded, plus interest running from the date of the demand until the date of payment at the rate specified by the AOC/Agreement. This may also include payment of stipulated penalties. If stipulated penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the AOC/Agreement, evidence necessary to prove the elements of those causes of action must be provided.)